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### **REMARKS**

Applicant would like to thank the Examiner for the courtesies extended during a telephonic interview conducted between Applicant's representative and Examiner Jasmin regarding the present application as well as 09/775,281. During that interview, agreement was reached that the changes made to the claims defined over the prior art of record. Applicant respectfully asserts that the pending claims are allowable and notice of the same is requested.

The Examiner has made the outstanding rejection final. Applicant respectfully asserts that the rejection of record was not supported by the references as asserted and discussed during the interview. As such, Applicant respectfully requests withdrawal of the finality and entry of this amendment.

Specifically, certain claims were rejected under 35 USC 102(e) as being anticipated by Clynych. In order to support a rejection under section 102, a given reference must teach each and every element of the claims. Claim 1, for example, in the form finally rejected required a "programmer in bi-directional communication with and capable of programming the at least one medical device" and the programmer is separately in communication a manufacturing control system. Clynych teaches a system for fabricating custom orthopedic implants. The Examiner asserted that the software used in this process equated to the claimed programmer. As a programmer is a device that is in data communication (two-way) with a medical device capable of such communication, the reference clearly fails to teach the claimed elements. Furthermore, the software is the manufacturing system, thus there is no communication as claimed.

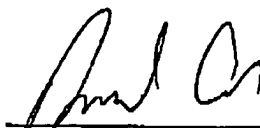
As the rejection under section 102 is unsupported by the reference, Applicant respectfully asserts that making such a rejection final was premature. Thus, Applicant requests withdrawal of the finality and entry of the present amendment in response to a non-final Office Action.

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Applicant respectfully asserts that the claims are in condition for allowance and respectfully requests notice of the same.

Respectfully submitted,

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